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SUBJECT: LEBANON TRIBUNAL: P-5 PERMREPS DISCUSS DRAFT UNSCR

REF: USUN 384

11. (SBU) P-5 PermReps met on May 17 to discuss the P-3 draft Chapter VII UNSC resolution on the Special Tribunal for Lebanon (reftel). French PR de la Sabliere introduced the draft resolution, noting that the co-authors preferred the "light" approach of deciding that the tribunal agreement and statute shall enter into force, rather than the "heavy" approach of the Council deciding to establish the tribunal on its own. He explained that operative paragraphs two and three give the SYG flexibility to ensure the tribunal can function even if the Lebanese parliament is unable to approve funding or conclude a headquarters agreement. De la Sabliere added that the GOL and UN Legal Counsel Michel fully support the draft resolution. Recalling that the SYG traveled to Beirut and Damascus and sent Michel to Beirut to push for Lebanese parliamentary ratification, UK DPR Pierce declared that no option is left but for the Council to take action. Ambassador Khalilzad observed that the Lebanese Government has asked the Council to act and we cannot let it down. The P-3 PermReps said they would circulate the draft text to all Council delegations immediately and introduce it in the Council next week.

12. (SBU) Noting that he did not yet have instructions, Russian PR Churkin asked several questions about Council action on the tribunal. First, although the SYG briefed Council members during the May 15 lunch and spoke to the press afterward, has the SYG made a formal recommendation for Council action? Second, what are the consequences in Lebanon of action under Chapter VII, and are there other options? For example, what will happen if judges refuse to serve? Third, can the UNSC now decide to ratify agreements for countries which have failed to do so themselves? In response, Ambassador Khalilzad read from the SYG's letter to the Council to emphasize that Ban had made his position clear, which seemed to satisfy Churkin. Ambassador Khalilzad also quoted PM Siniora's request for "binding" action and asked rhetorically if there were other ways to achieve this goal (than Chapter VII). Churkin raised the issue of appointment of judges. Ambassadors Khalilzad and de la Sabliere noted the P-3 could have amended the agreement's provisions on the how the judges will be appointed, but decided to leave the agreement untouched and let the Lebanese process play out. But the Council could revisit the issue of judges if Russia would prefer. Churkin demurred. On the legal basis of the resolution, de la Sabliere said Lebanon's situation is unique and that the Council should do the minimum necessary to overcome the current deadlock.

13. (SBU) Pending instructions from Beijing, Chinese DPR Liu

Zhenmin's said China thought Chapter VII should be used only in narrowly prescribed circumstances. He noted that the use of Chapter VII connotes military implications. Liu argued the Council must consider the domestic implications of acting to establish the tribunal when the Lebanese have been unable to do so themselves. He said UNSC members should consult Arab countries, the Arab League, and Qatar, as the Arab member of the UNSC, to understand the regional implications of this action. The Council's overall objective in Lebanon must be to ensure peace and justice. After examining the text, Liu expressed relief that the P-3 had avoided recourse to assessed contributions (i.e., compulsory funding of the tribunal by the UN from annual member state contributions). The Council should avoid setting up new tribunals like the International Criminal Tribunal for Yugoslavia (ICTY) or Rwanda (ICTR), he said.

KHALILZAD